

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-31969

SCOTT ERIC JONES  
CATHY SUE JONES

Debtors

SCOTT JONES and CATHY JONES

Plaintiffs

v.

Adv. Proc. No. 03-3056

HOUSEHOLD FINANCE CORPORATION

Defendant

**MEMORANDUM**

**APPEARANCES:** MOSTOLLER, STULBERG & WHITFIELD  
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Attorneys for Household Finance Corporation

**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

The Debtors filed the Complaint initiating this adversary proceeding on April 15, 2003, alleging that the Defendant, Household Finance Corporation, their mortgage lender, violated the Truth-in-Lending Act, 15 U.S.C.A. § 1601 *et seq.* (West 1997 & Supp. 2003), 12 C.F.R. § 226 (Regulation Z) (West 1997 & Supp. 2003), and Tennessee Code Annotated section 47-18-104 (2001 & Supp. 2002), the Tennessee Consumer Protection Act. On September 4, 2003, the court entered an Order, questioning the lack of the court's subject matter jurisdiction over this adversary proceeding, and directed the Debtors to show cause why the adversary proceeding should not be dismissed therefor. On September 18, 2003, the Debtors filed the Plaintiffs' Brief in Support of Subject Matter Jurisdiction of Bankruptcy Court, arguing that the court has "related to" jurisdiction under 28 U.S.C.A. § 157(c)(1) (West 1993).

## I

The Debtors filed the Voluntary Petition commencing their Chapter 7 bankruptcy case on April 10, 2003. On April 15, 2003, they filed the Complaint commencing this adversary proceeding, alleging that they entered into a "credit transaction" with the Defendant on January 8, 2000, resulting in their obtaining a loan from the Defendant secured by the Debtors' residence at 718 Florida Avenue, Oak Ridge, Tennessee. With regard to the transaction, the Debtors aver that the Defendant (1) failed to properly and accurately disclose the "amount financed" as defined; (2) failed to clearly and accurately disclose the "finance charge" as defined; (3) failed to clearly and accurately disclose the "annual percentage rate" as defined; (4) failed to properly disclose the number, amounts, and timing of the scheduled payments for repayment of the mortgage; (5) failed to clearly and accurately disclose the "total of payments" as defined; and (6) failed to deliver to

the Debtors copies of the notice of their right to rescind. The Debtors' prayer for relief requests: (1) that the court assume jurisdiction of the case; (2) rescission of the transaction; (3) termination of the security interest; (4) return of all payments made on account of the transaction; (5) permanently enjoining Household from foreclosing on the real property; (6) an award of twice the finance charges; (7) vesting of the right to retain the proceeds to the Debtors; (8) actual damages to be established; and (9) costs and reasonable attorneys' fees. Although the Complaint alleges that this is a core proceeding pursuant to 28 U.S.C.A. § 157(b)(2)(B), (C), (D), (F), (K), and (O) (West 1993), it contains no alleged violations of any provision of the Bankruptcy Code.

The Debtors filed an Amended Complaint as a Matter of Course on May 7, 2003, attaching two additional exhibits in support of their original allegations. The Defendant filed its Answer to Complaint and Answer to Amended Complaint on July 11, 2003, denying any violations of the Truth-in-Lending Act and the Tennessee Consumer Protection Act. Thereafter, on August 27, 2003, the parties filed the Bankruptcy Rule 7026 Discovery Plan, setting forth the nature and basis of the claims to be the Defendant's alleged violations of the Truth-in-Lending Act and the Tennessee Consumer Protection Act.

Meanwhile, in the underlying bankruptcy case, the Trustee filed the Trustee's Report of No Distribution and Report of Abandoned Property on June 16, 2003. On July 1, 2003, the Debtors filed Amended Schedules B and C, to include in their personal property and claimed exemptions "damages against Household Finance for violation of the Truth-in-Lending and Tennessee Consumer Protection Acts" in the amount of \$5,300.00, exempt up to \$5,000.00 pursuant to Tennessee Code Annotated section 26-2-103 (2001). Neither the Trustee nor any other

party in interest objected to the amended schedules. On September 17, 2003, the Debtors received their discharge.

On September 4, 2003, the court entered an Order, directing the Debtors to show cause why the adversary proceeding should not be dismissed for lack of subject matter jurisdiction. The court took judicial notice, pursuant to Federal Rule of Evidence 201, that the Chapter 7 Trustee had abandoned the property of the estate as "burdensome to the estate or . . . of inconsequential value and benefit to the estate." 11 U.S.C.A. § 554(a) (West 1993). Additionally, the court took judicial notice that because no party in interest had objected to the Debtors' Amended Schedule C, listing the damages sought against the Defendant as exempt property, any damages recovered were exempt. *See* 11 U.S.C.A. § 522(b) and (l) (West 1993 & Supp. 2003); FED. R. BANKR. P. 4003(b) ("A party in interest may file an objection to the list of property claimed as exempt only . . . within 30 days after any amendment to the list[.]").

Pursuant to the court's September 4, 2003 show cause Order, the Debtors filed their brief in support of the bankruptcy court's subject matter jurisdiction over this adversary proceeding. The Debtors argue that, while the Trustee's abandonment of the property of the estate removed the "core" nature of this proceeding, the court retains "related to" jurisdiction pursuant to 28 U.S.C.A. § 157(c)(1) (West 1993). The Debtors seek rescission of their mortgage contract with the Defendant, which they argue will determine the extent to which the Defendant holds a security interest in their home. Accordingly, the Debtors argue that this decision will have an effect on how that specific property will be administered in the bankruptcy, notwithstanding the Trustee's abandonment thereof.

## II

"The federal courts are courts of limited jurisdiction, and have a continuing obligation to examine their subject matter jurisdiction throughout the pendency of every matter before them." *Robinson v. Mich. Consol. Gas Co., Inc.*, 918 F.2d 579, 582 (6<sup>th</sup> Cir. 1990). Moreover, subject matter jurisdiction may not be waived. *Matuscak v. United States Bankr. Ct. Clerk (In re Rini)*, 782 F.2d 603, 608 (6<sup>th</sup> Cir. 1986) ("It is well established that parties cannot somehow waive jurisdictional objections, nor can they consent to the jurisdiction of a court when that court lacks jurisdiction over the subject matter of their dispute."). "Unlike other issues not involving the merits of a case, subject-matter jurisdiction may be raised at any time, by any party or even sua sponte by the court itself." *Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 630 (6<sup>th</sup> Cir. 1992).

Generally, federal courts have subject matter jurisdiction over only two types of civil proceedings, those involving federal questions and those involving a diversity of citizenship. *See* 28 U.S.C.A. §§ 1331 (West 1993) and 1332 (West 1993 & Supp. 2003). Bankruptcy falls under the purview of title 11 of the United States Code, thereby falling within the scope of § 1331's federal question jurisdiction. Additionally, jurisdiction over bankruptcy matters is exclusive to the federal courts pursuant to 28 U.S.C.A. § 1334, which provides, in pertinent part:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C.A. § 1334 (West 1993). Section 1334 is supplemented by 28 U.S.C.A. § 157 (West 1993 & Supp. 2003), which allows bankruptcy courts to hear "core proceedings" arising under title 11 or arising in a case under title 11. *See* 28 U.S.C.A. § 157(a) and (b). Section 157(c), governing non-core proceedings that are nevertheless "related to" bankruptcy proceedings, provides that:

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all parties to the proceeding may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title [governing appeals].

28 U.S.C.A. § 157(c).

Jurisdiction over Truth-in-Lending Act violations is conferred upon "any United States district court, or in any other court of competent jurisdiction." 15 U.S.C. § 1640(e) (West 1997). Because the Debtors' adversary proceeding is based first and foremost upon federal law, *i.e.*, the Truth-in-Lending Act, there is no question that the federal courts have subject matter jurisdiction under § 1331. Nevertheless, in order for the bankruptcy court to have jurisdiction, the adversary proceeding must either arise under title 11, arise in a case under title 11, or be related to a case under title 11. *See* 28 U.S.C.A. § 1334(b).

Generally, a core proceeding "invokes a substantive right created by federal bankruptcy law or one which could not exist outside of the bankruptcy." *Sanders Confectionary Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 483 (6<sup>th</sup> Cir. 1992). Cases "under title 11" refer to the actual bankruptcy cases "commenced in a federal district court or bankruptcy court with the filing of a petition [initiating the bankruptcy]." *Robinson*, 918 F.2d at 583. "Arising in" and "arising under" actions includes matters "that arise only in bankruptcy cases" and would include adversary proceedings and contested matters concerning issues contained in or provided for by the Bankruptcy Code. *Dally v. Bank One, Chicago, N.A. (In re Dally)*, 202 B.R. 724, 727 (Bankr. N.D. Ill. 1996). In this case, clearly, the adversary proceeding against the Defendant is not a core proceeding. The adversary proceeding is not a case filed under title 11, nor did it arise only in or only under the Debtors' bankruptcy case. Accordingly, unless the case is "related to" the Debtors' bankruptcy case, the bankruptcy court does not have jurisdiction.

The Sixth Circuit has adopted the following definition for "related to" jurisdiction:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Robinson*, 918 F.2d at 583 (quoting *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3d Cir. 1984)). In order for a court to exercise "related to" jurisdiction, "[t]here must be some nexus between the action and the debtor's bankruptcy case[.]" *Beneficial Nat'l Bank USA v. Best Receptions Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 944 (Bankr. E.D. Tenn.

1998), or " if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Robinson*, 918 F.2d at 583 (quoting *Pacor*, 743 F.2d at 994). However, "[i]f a non-core proceeding is not related to a case under title 11, then the bankruptcy court lacks subject matter jurisdiction over the proceeding." *Best Reception Sys., Inc.*, 220 B.R. at 944.

Generally, adversary proceedings concerning Truth-in-Lending violations are determined to be "related to" debtors' bankruptcies. *See, e.g., Porter v. NationsCredit Consumer Discount Co. (In re Porter)*, 295 B.R. 529, 540 (Bankr. E.D. Pa. 2003) (Although Truth-in-Lending Act claims are not core, claims "arising from [the debtor's] prepetition loan agreement . . . would be property of her bankruptcy estate . . . [, t]he disposition of [which] may conceivably affect the assets of the bankruptcy estate . . . and so would be "related to" [her] bankruptcy case.") (internal citations omitted); *Schwab v. Sears, Roebuck & Co. (In re Derienzo)*, 254 B.R. 334, 338 (Bankr. M.D. Pa. 2000) ("While these matters [based upon violations of the Truth-in-Lending Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law] may enrich the bankruptcy estate and, thus, be related matters, they neither arise in nor arise out of the bankruptcy."). As these cases make clear, if the determination of a Truth-in-Lending Act violation will affect the assets of the case and/or distribution to creditors, the court has "related to" jurisdiction over the case.

In this case, however, the Trustee abandoned all property of the estate pursuant to his Trustee's Report of No Distribution and Report of Abandoned Property. Likewise, the Debtors'



claimed \$5,000.00 exemption in possible damages against the Defendant for its alleged Truth-in-Lending violations was not objected to and was, therefore, subtracted from the Debtors' bankruptcy estate. Correspondingly, even though the court quite possibly had "related to" jurisdiction over this adversary proceeding, the question is whether the court has retained this "related to" jurisdiction after the property to be affected by the Debtors' action against the Defendant reverted back to the Debtors by virtue of the allowance of exemptions and the Trustee's abandonment.

### III

At the commencement of a bankruptcy case, an estate is created, which includes, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C.A. § 541(a)(1) (West 1993). Under § 157(b)(2), the bankruptcy court has "exclusive jurisdiction over both property of the estate and property of the debtor." 11 U.S.C.A. § 157(b)(2); *In re Lafoon*, 278 B.R. 767, 771 (Bankr. E.D. Tenn. 2002).

Irrespective of § 541, a debtor may exempt certain property from the bankruptcy estate. *See* 11 U.S.C.A. § 522 (West 1993 & Supp. 2003). The debtor's exempted property is then subtracted from the bankruptcy estate, not to be distributed to creditors, in order that the debtor will retain sufficient property after the bankruptcy to obtain his "fresh start." *In re Northern*, 294 B.R. 821, 826-27 (Bankr. E.D. Tenn. 2003) (citing *Lawrence v. Jahn (In re Lawrence)*, 219 B.R. 786, 792 (E.D. Tenn. 1998)). A party in interest may object to a debtor's claimed exemptions either within thirty days after the debtor's meeting of creditors was held or within thirty days after

the debtor has amended or supplemented his exemptions. FED. R. BANKR. P. 4003(b). Failure of any party in interest to object results in the property listed as exempt being exempted and subtracted from the debtor's bankruptcy estate. 11 U.S.C.A. § 522(l); *In re Butler*, 2001 Bankr. LEXIS 1724, at \*3 (Bankr. E.D. Tenn. Dec. 21, 2001) (holding that once a debtor's exemptions have been allowed, the exempted property is "no longer property of the estate over which the Trustee could exercise control.").

Because no party in interest objected to the Debtors' claimed exemptions, all interest that the Debtors had in any possible damages to be recovered from the Defendant by virtue of its alleged Truth-in-Lending violations, up to \$5,000.00, were subtracted from the Debtors' bankruptcy estate, resulting in the potential recovery being withheld from any possible distribution to creditors. The remaining potential \$300.00 recovery listed in the Debtors' schedule of personal property would have remained property of the Debtors' bankruptcy estate except that it was abandoned when the Chapter 7 Trustee filed the Trustee's Report of No Distribution and Report of Abandoned Property on June 16, 2003.<sup>1</sup>

The Trustee's Report of No Distribution and Report of Abandoned Property states that the Trustee did not receive any property for distribution to creditors, that he does not believe that there was any property for distribution to creditors, and that he was abandoning all property of the estate as burdensome or of inconsequential value to the estate. Some courts have held that when the trustee abandons property of the estate, and it reverts back to the debtor, the bankruptcy

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<sup>1</sup> Notwithstanding that the Debtors filed the Amended Schedules B and C including and exempting their claim against the Defendant after the Trustee filed the Trustee's Report of No Distribution and Report of Abandoned Property, the Trustee has not sought to withdraw the report.

court retains jurisdiction. *Lafoon*, 278 B.R. at 771 (addressing § 522(f)(1) issue); *see also Dunmore v. United States (In re Dunmore)*, 254 B.R. 761, 763 (Bankr. N.D. Cal. 2000) ("The trustee's subsequent abandonment of the tax refund claims did not divest the court of jurisdiction."); *In re Mangold*, 244 B.R. 901, 904 (Bankr. S.D. Ohio 2000) ("[T]he court retains jurisdiction to determine whether liens on abandoned property impair a debtor's exemptions."). The key factor in these decisions was that the courts' determinations concerned issues directly related to actions pursued under the Bankruptcy Code that affected treatment of creditors. "Usually abandonment of property will end the court's jurisdiction to determine disputes concerning the property . . . unless the result of the dispute could have some effect on the bankruptcy case." *Dunmore*, 254 B.R. at 763.

On the other hand, the majority of courts have held that "[t]he effect of abandonment by a trustee is to divest the bankruptcy estate of control over the abandoned property and to revest title in the debtor. In doing so, the property becomes part of the debtor's non-bankruptcy estate, just as if no bankruptcy had occurred." *First Ga. Bank v. FNB So. (In re Moody)*, 277 B.R. 858, 861 (Bankr. S.D. Ga. 2001); *see also Newkirk v. Wasden (In re Bray)*, 288 B.R. 305, 307 (Bankr. S.D. Ga. 2001) ("Where an asset has been abandoned by the Trustee, that asset is no longer a part of the bankruptcy estate . . . , the property reverts back to its pre-bankruptcy status, and that asset is properly removed from the jurisdiction of the bankruptcy court.") (internal citations omitted); *Mass. Cas. Ins. Co. v. Green (In re Green)*, 241 B.R. 550, 560-61 (Bankr. N.D. Ill. 1999) ("When property leaves the bankruptcy estate, whether by sale or otherwise, the bankruptcy court's jurisdiction over that property lapses. A bankruptcy court has no jurisdiction over

property that is no longer part of the bankruptcy estate. When a trustee abandons property to the debtor, there is no remaining basis for bankruptcy court jurisdiction.”); *Keller v. CIT Group/Consumer Fin., Inc. (In re Keller)*, 229 B.R. 900, 902 (Bankr. S.D. Ohio 1998) (“[T]he effect of the abandonment is clear. Whether property be abandoned under § 554(a) or (c), it is removed from the estate, thereby divesting the trustee of control, and divesting the bankruptcy court of jurisdiction over matters concerning the abandoned property.”); *Dally*, 202 B.R. at 727 (“[O]nce a debtor (or trustee in a Chapter 7 proceeding) has abandoned any claim to property, there is rarely any basis for bankruptcy court jurisdiction.”).

In the present action, there is no remaining basis for “related to” jurisdiction. The outcome of the Debtors’ lawsuit against the Defendant will not affect, in any way, the administration of the bankruptcy case. The Debtors have exempted any potential damages to be received from the Defendant, and the Trustee has abandoned all property of the estate, including the claim asserted by the Debtors in this adversary proceeding. Accordingly, the Debtors are once again in possession and control of their pre-petition property, and as they have received their discharge, the Debtors are no longer liable for any pre-petition debts. *See* 11 U.S.C.A. § 727(b) (West 1993); *In re Castle*, 289 B.R. 882, 886 (Bankr. E.D. Tenn. 2003) (“A discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt.”) (quoting *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 53 (5<sup>th</sup> Cir. 1993)).

The relief sought by the Debtors is rescission of their mortgage transaction with the Defendant and monetary damages. Action by the bankruptcy court in favor of either party will not alter the bankruptcy case or change, in any way, the distribution of the Debtors’ bankruptcy

estate. A decision in favor of either party will not affect any other creditors of the Debtors, nor will it result in any distribution to any other creditors. As such, the Debtors' Truth-in-Lending cause of action against the Defendant is not "related to" the Debtors' bankruptcy case, and thus, the bankruptcy court does not retain subject matter jurisdiction over this adversary proceeding.

In summary, this adversary proceeding cannot proceed in the bankruptcy court. Instead, the United States District Court is the proper forum for the Debtors' action against the Defendant for its alleged Truth-in-Lending violations.

An order dismissing the Debtors' action will be entered.

FILED: September 30, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
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Adv. Proc. No. 03-3056

HOUSEHOLD FINANCE CORPORATION

Defendant

**ORDER**

For the reasons stated in the Memorandum filed this date, the court, *sua sponte*, directs that the Complaint filed by the Plaintiffs on April 15, 2003, as amended on May 7, 2003, is DISMISSED for lack of subject matter jurisdiction.

SO ORDERED.

ENTER: September 30, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE